

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

MICHAEL HAFFNER, as Trustee of the	)	
CHAUFFEURS, TEAMSTERS & HELPERS	)	
LOCAL UNION NO. 301 HEALTH &	)	
WELFARE FUND and as Trustee of the	)	Case No. 12-cv-06847
CHAUFFEURS, TEAMSTERS & HELPERS	)	
LOCAL UNION NO. 301 PENSION FUND,	)	Honorable Virginia M. Kendall
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
ARROW MARINE TRANSPORT, INC.,	)	
	)	
Defendant.	)	

**PLAINTIFF’S MOTION FOR JUDGMENT BY CONFESSION**

Plaintiff Michael Haffner, as Trustee of the Chauffeurs, Teamsters & Helpers Local Union No. 301 Health & Welfare Fund and of the Chauffeurs, Teamsters & Helpers Local Union No. 301 Pension Fund, moves for judgment by confession against Defendant Arrow Marine Transport, Inc. (“Arrow Marine”), and in support thereof states:

**BACKGROUND**

1. This case arises pursuant to Section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(3) to collect delinquent employee benefit fund contributions.
2. The Complaint in this matter was filed with the Court on August 27, 2012. (Dkt. #1). The executed Summons confirming service of the Complaint on Arrow Marine was filed on September 12, 2012. (Dkt. #5).
3. Pursuant to an Agreed Motion for Extension of Time, the Court ordered Arrow Marine’s Answer to be filed by November 18, 2012. (Dkt. ##8, 10).

4. On November 16, 2012, the parties executed a Settlement and Installment Agreement (“Agreement”). (Dkt. #15-1).

5. On November 20, 2012, the parties filed a Joint Motion for Entry of Agreed Order of Dismissal. (Dkt. #15).

6. On December 3, 2012, the court entered an Agreed Order of Dismissal based on the parties’ settlement, and retained jurisdiction for purposes of enforcing the Agreement. (Dkt. #20).

### **THE TERMS OF THE AGREEMENT**

7. Pursuant to Paragraph 1 of the Agreement concerning “Current Contributions,” Arrow Marine agreed to make payments to the Funds so as to become completely current on amounts due and owing the Funds, including contributions that become due during the life of the Agreement, on or before March 1, 2013. (Dkt. #15-1, Page ID #113).

8. Pursuant to Paragraph 2 of the Agreement concerning “Previous Delinquencies,” Arrow Marine agreed to pay previous delinquencies for the period of January 1, 2008 through December 31, 2009, plus 3% annual interest, in the total amount of \$105,553.80. (Dkt. #15-1, Page ID #113).

9. The Agreement provides:

**4.c) Acceleration.** In the event the Employer fails to make any payment required by this Agreement or any timely current contribution to the Funds when due, the remaining unpaid balance (including delinquent contributions, liquidated damages and interest), plus all attorneys’ fees and costs incurred by Funds in collecting the unpaid balance, shall be immediately due and payable to the Funds.

### **5. CONFESSION OF JUDGMENT**

Upon acceleration in accordance with Paragraph 4, the Employer hereby waives notice and presentment and authorizes any attorney of any court or record to enter appearance and confess judgment against it for the balance

due and owing under this Agreement, any contractual delinquencies in current contributions, and the costs and reasonable attorneys' fees incurred in enforcing the Employer's obligations hereunder.

### **THE BREACH OF THE AGREEMENT**

10. Arrow Marine has not paid Current Contributions as required by the Agreement, in that Welfare Fund contributions for October 2012 through February 2013 of \$24,750.00 were not paid by March 1, 2013. (See Affidavit of Michael B. Haffner, attached as Exhibit A, ¶5).

11. Arrow Marine has not paid Current Contributions as required by the Agreement, in that Pension Fund contributions for July through December 2012 of \$17,787.00 were not paid by March 1, 2013. (Ex. A, ¶6).

12. While the Funds agreed to waive the applicable 10% liquidated damages for June through October 2012 delinquent contributions, Arrow Marine owes liquidated damages of \$1,600.00 to the Welfare Fund for the months of November 2012 through February 2013, and \$345.45 to the Pension Fund for the months of November and December 2012. (Ex. A, ¶7).

13. Pursuant to Paragraph 2(c) of the Agreement, concerning "Previous Delinquencies, Arrow Marine owes the Funds \$93,553.80. (Dkt. #15-1, Page ID ##113-14; Ex. A, ¶8).

14. Plaintiff has incurred attorneys' fees associated with pursuing this matter totaling \$3,342 from March 1, 2013 through May 19, 2013. (See Affidavit of Laura L. Fischer, attached as Exhibit B.) This amount continues to accrue.

WHEREFORE, Plaintiff requests that this Court enter an order of judgment by confession pursuant to the terms of the Agreement, in the following amounts:

- A) A total amount on behalf of Plaintiff of \$145,519.33, which includes:
- The remaining balance on the Agreement of \$93,553.80 plus \$2,806.61 in statutory interest pursuant to IRC 6621(a)(2);

- The contributions and liquidated damages due and owing to the Health & Welfare Fund for October 2012 through February 2013 totaling \$26,350.00, plus \$790.50 in statutory interest pursuant to IRC 6621(a)(2);
- The contributions and liquidated damages due and owing to the Pension Fund for July through December 2012 totaling \$18,132.45, plus \$543.97 in statutory interest pursuant to IRC 6621(a)(2); and
- Reasonable attorneys' fees incurred by the Funds in pursuing this action, in the amount of \$3,342, which continue to accrue, plus any additional reasonable attorney fees and costs incurred in pursuing this action; and

B) Any other relief this Court deems just and appropriate.

Respectfully submitted,

*s/Laura L. Fischer*

Laura L. Fischer  
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Attorney for Plaintiff  
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Dated: May 23, 2013

**CERTIFICATE OF SERVICE**

Laura L. Fischer, an attorney, states that the foregoing **Plaintiff's Motion For Judgment By Confession** is being served via ECF this 23rd day of May, 2013 on the following:

Rob Klein, Esq.  
Brian Schwartz  
Klein Dub & Holleb, Ltd.  
606 LaSalle Place  
Suite 100  
Highland Park, IL 60035

s/ *Laura L. Fischer*  
Laura L. Fischer